



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB779]

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferry Berth Improvements in Tongass Narrows, Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of incidental harassment authorization.

**SUMMARY:** NMFS has received a request from the Alaska Department of Transportation and Public Facilities (ADOT&PF) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of eight species of marine mammals, by Level A and Level B harassment, incidental to Ferry Berth Improvements at Tongass Narrows, near Ketchikan, AK. The project has been delayed and none of the work covered in the initial IHA has been conducted. The initial IHA was effective from March 1, 2021 through February 28, 2022. ADOT&PF has requested re-issuance with new effective dates of March 1, 2022, through February 28, 2023. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

**DATES:** This authorization is effective from March 1, 2022, through February 28, 2023.

**ADDRESSES:** An electronic copy of the final 2020 IHA previously issued to ADOT&PF, ADOT&PF application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

### **Summary of Request**

On January 7, 2020, NMFS published a final notice of our issuance of two consecutive IHAs authorizing take of marine mammals incidental to the Ferry Berth Improvements in Tongass Narrows, Alaska (85 FR 637). The effective dates of the first IHA were from March 1, 2020 through February 28, 2021 (Phase 1) while the effective dates of the second IHA were from from March 1, 2021 through February 28, 2022 (Phase 2). Due to various project delays and two minor changes in the activity, ADOT&PF requested a renewal of the Phase 1 IHA. NMFS issued renewal of the Phase 1 IHA on May 5, 2021 (86 FR 23938). On November 22, 2021, ADOT&PF informed NMFS that due to project delays none of the work identified in the initial Phase 2 IHA (*e.g.*, pile installation and removal) had occurred. ADOT&PF submitted a request that we reissue an identical Phase 2 IHA that would be effective from March 1, 2022 through February 28, 2023, in order to conduct the construction work that was analyzed and authorized through the previously issued Phase 2 IHA. Therefore, re-issuance of the IHA is appropriate.

### **Summary of Specified Activity and Anticipated Impacts**

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued Phase 2 IHA.

The purpose of ADOT&PF's construction project is to improve facilities that provide reliable access to Ketchikan International Airport and facilitate growth and development in the region. Some of the existing ferry facilities are aging and periodically out-of-service for repairs or maintenance, and this project will provide redundant ferry berths to increase reliability. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical those described in the initial Phase 2 IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Take of a small number of eight species of marine mammals has been authorized by NMFS. Three of those species, harbor seal (*Phoca vitulina richardii*), harbor porpoise (*Phocoena phocoena*), and Dall's porpoise (*Phocoenoides dalli*) may be taken by Level A or Level B harassment while the remaining five species would be taken by Level B harassment only. These species include humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and Steller sea lion (*Eschrichtius robustus*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial Phase 2 IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the Phase I and Phase 2 IHAs for ADOT&PF construction work (85 FR 673; January 7, 2020), ADOT&PF application, the **Federal Register** notice of the proposed IHAs (84 FR 34134; July 17, 2019), and all associated references and documents.

## **Determinations**

ADOT&PF will conduct activities as analyzed in the initial Phase 2 2021-2022 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The re-issued 2022 IHA includes identical required mitigation, monitoring, and reporting measures as the initial Phase 2 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) ADOT&PF's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

## **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the

potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

### **Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with NMFS' Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is authorizing take of the Central North Pacific stock of humpback whales, of which a portion belong to the Mexico DPS of humpback whales, which are listed under the ESA.

The action agencies are the Federal Highway Administration (FHA) and the NMFS Office of Protected Resources Permits and Conservation Division. On February 6, 2019, NMFS completed consultation with ADOT&PF for Tongass Narrows Project and issued a Biological Opinion with the FHA as an action agency. Reinitiation of formal consultation was required to add NMFS Permits and Conservation Division as an action agency and to analyze changes to the action that were not considered in the February 2019 opinion (PCTS# AKR-2018-9806/ECO# AKRO-2018-01287). The original opinion considered the effects of only one project component being constructed at a time and did not analyze potential effects of concurrent pile driving which may cause effects to the listed species that were not considered in the original opinion; therefore, reinitiation of formal consultation was required.

NMFS' Alaska Region issued a revised Biological Opinion to NMFS' Office of Protected Resources on December 19, 2019 which concluded that issuance of the Phase 1 and Phase 2 IHAs to ADOT&PF is not likely to jeopardize the continued existence of Mexico DPS humpback whales.

**Authorization**

NMFS has issued an IHA to ADOT&PF for in-water construction activities associated with the specified activity from March 1, 2022, through February 28, 2023. All previously described mitigation, monitoring, and reporting requirements from the initial Phase 2 IHA are incorporated.

Dated: February 25, 2022.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

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